IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.25458 of 2007

Burn Standard Co. Ltd.,
(A Government of India Undertaking)
rep. by the General Manager R.Raghunathan
Salem - 636 005 .. Petitioner.

vs.

1. Union of India
   rep. by the Secretary
   Ministry of Mines, New Delhi - 11

2. Ministry of Heavy Industries
   and Public Enterprises,
   Government of India,
   rep. by the Secretary,
   Udyog Bhawan, New Delhi -11

3. The State of Tamil Nadu
   rep by the Chief Secretary,
   Fort St. George, Chennai - 9

4. The Secretary,
   Revenue Department
   Government of Tamil Nadu
   Fort St.George, Chennai - 9

5. The Secretary,
   Agricultural Department,
   Fort St.George, Chennai - 9

6. The Commissioner,
   Department of Geology and Mining
   Guindy, Chennai

7. The Assistant Director,
   Department of Geology and Mining,
   26-A, Shankar Nagar, Salem-7

8. The District Collector,
   Salem District
   Salem

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9. The Tahsildar,
   Salem

10. Chairman cum Managing Director,
    Elcot, Chennai - 600 035 .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the fourth respondent pertaining to G.O.Ms.No.114, Revenue (Ni Mu 7) Department, dated 7.3.2007, quash the same and to direct the respondents 3 to 9 to desist from interfering with the petitioner's mining operations in S.Nos.1/1, 2/1 and 163/2 in Jagir Ammapalayam, Salem District.

For petitioner : Mrs.Hema Sampath, Senior Counsel
for M/s.R.Subramaniam

For respondents : Mr.P.Wilson,
Assistant Solicitor General,
for Mr.S.Udayakumar for R1 and R2,
Mr.P.S.Raman,
Additional Advocate General,
for Mr.A.Arumugam Additional Government Pleader for 3 to 9
and Mr.M.Vijayan for M/s.King & Partridge, for R10

O R D E R

Heard Mrs.Hema Sampath, the learned senior counsel appearing for the petitioner, Mr.P.Wilson, the learned Assistant Solicitor General of India, for the respondents 1 and 2, Mr.P.S.Raman, the learned Additional Advocate General, for the respondents 3 to 9 and Mr.Vijayan for M/s.King & Partridge, appearing for the respondent 10.

2. The petitioner is a Company registered under the provisions of the Companies Act, 1956 and it is a Government of India undertaking. The petitioner company had started mining operations in Salem and has continued to do so, for the past several decades. The petitioner company is mining Magnesite from its lease hold lands and the mined Magnesite is processed in its factory at Salem. The products manufactured in the said factory at Salem are used by all major steel plants, as well as copper, glass and cement industries in India and in other countries. With a turnover of more than 65 crores the petitioner is earning valuable foreign exchange by exporting its various products like Calcinated Magnesite, refractory bricks and refractory bulk materials. The petitioner company has invested huge amounts of money in installing modern equipments for the mining and manufacturing process and has employed more than 250 employees to carry on its activities. The petitioner company is the only company in the country manufacturing refractories. The petitioner company has been mining Magnesite in Jagir Amma Palayam and Thathiyangarpatti areas in

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Salem, under three lease deeds. The present writ petition is relating to the mines in the lands in Jagir Amma Palayam Village covered by two lease deeds, dated 01.09.1981 and 14.12.1982. The period of both the leases was twenty years. The petitioner had applied for renewal for a further period of twenty years, as per the Minor Mineral Concession Rules, 1960 (in Short `the Rules'). The District Collector, Salem District, the 8th respondent herein had also recommended for the renewal of the lease in favour of the petitioner company. Since the fresh lease had not been executed by the State Government, under Rule 25A of the Rules, the lease is deemed to have been renewed. However, Government of Tamilnadu had passed a Government Order in G.O.Ms.No.114 Revenue (Ni.Mu.7), Department, dated 07.03.007, proposing to convey the land to ELCOT for establishing an information Technology Park, without giving any opportunity to the petitioner to raise objections. In such circumstances, the petitioner company had preferred the present writ petition before this Court, challenging G.O.Ms.No.114 Revenue (Ni.Mu.7), dated 07.03.2007, as ultravires, illegal and invalid in the eye of law.

3. Since the learned counsels appearing on behalf of the respondents have raised a preliminary objection with regard to the maintainability of the writ petition before this Court, without the petitioner having placed the matter before the High Powered Committee, as contemplated by the Supreme Court in its decision, reported in Chief Conservator of Forests, Govt. of A.P. Vs. Collector and others (AIR 2003 S.C.1805), it has become necessary for this Court, without going into the merits of the case, to decide the preliminary issue, by consent of the learned counsels appearing on behalf of the parties concerned.

4. The preliminary objection has been raised in paragraph 4 of the counter-affidavit, filed on behalf of the respondents 3 to 9, which reads as follows:

> "4. I am advised to state that the above writ petition is not maintainable since the petitioner approached this Court seeking remedy under Article 226 of the Constitution without exhausting the other alternative remedy available to them. Further, I submit that when there is any dispute between two public sector undertakings, the same will have to be first referred before the High Level Committee and without exhausting the said forum a writ is not maintainable. Therefore on this short ground alone the above writ petition is not maintainable and liable to be dismissed."

5. In reply to the preliminary objection raised on behalf of the respondents, the learned senior counsel, appearing on behalf of the petitioner, has submitted that the petitioner, though a Government of India undertaking, is not a "State" under Article 12 of the Constitution of India, as the activities carried on by the petitioner are purely commercial in nature and therefore, such business activities carried on by

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the petitioner cannot be said to be the activities of the "State". Since the petitioner does not fall under the definition of the "State", the formality of placing the matter before the High Powered Committee, before approaching the Courts of law, does not arise. Even othewise, an instrumentality, an agency or an authority can come under the definition of the "State" for some purposes and not for others. Therefore, the contentions raised on behalf of the respondents, with regard to the preliminary objections, will not be applicable in the case of the petitioner.

6. The learned senior counsel appearing on behalf of the petitioner, had relied on the following decisions of the Supreme Court in support of her contentions.

6.1) In The State of Bihar Vs. The Union of India and another (AIR 1970 SC 1446) it was held as follows:-

> "19.It was argued by counsel on behalf of the State of Bihar that so far as the Hindustan Steel ltd., is concerned it is `State' and the suits in which the Government of India along with Hindustan Steel Ltd. have been impleaded are properly filed within Article 131 of the Constitution triable by this Court in its original jurisdiction. Reference was made to the case of Rajasthan State Electricity Board V. Mohan Lal, (1967) 3 SCR 377 = AIR 1967 SC 1857. There the question arose between certain persons who were permanent employees of the Government of the State of Rajasthan and later placed at the disposal of the State electricity Board and one of the questions was whether the appellant Board could be held to be `State' as defined in Article 12. This Court by a majority held that the Board was "other authority" within the meaning of Article 12 and therefore was a State to which appropriate directions could be given under Articles 226 and 227 of the Constitution. It will be noted that under Article 12 all local or other authorities within the territory of India or under the control of the Government of India are `States' for purposes of Part III which defines and deals with the Fundamental Rights enshrined in the Constitution. The expression "the State" has the same meaning in Part IV of the Constitution under Article 36. No reason was shown as to why the enlarged definition of `State' given in Parts III and IV of the Constitution would be attracted to Article 131 of the Constitution and in our opinion a body like the Hindustan Steel Ltd., cannot be considered to be "a State" for the purpose of Article 131 of the Constitution."

6.2) In State of Rajasthan and others V. Union of India (AIR 1977 Supreme Court 1361) it was held as follows:-

> "92. Article 300 of the Constitution provides, inter alia, that "the Government of a State may sue or be sued by the name of the State." From this, Mr.Niren De wanted us to infer that there was no distinction between a State and the State Government as juristic entities. Even if there be some grounds for making a distinction between a State's interests and rights

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and those of its Government or its members, I do not think that we need take a too restrictive or a hyper-technical view of the State's rights to sue for any rights, actual or fancied, which the State Government chooses to take up on behalf of the State concerned in a suit under Article 131. Moreover as we have decided not to grant any reliefs after having heard detailed arguments and fully considered the merits of contentions advanced by both sides, I do not think that we need determine, on this occasion, the precise scope of a suit under Article 131, I prefer to base my judgment on other grounds.".....

103. The absence of the expression "State Government" and the use in its place of the expression "State" in Art.131, is said to furnish intrinsic evidence that for a suit to fall under that Article, the dispute must arise between the Government of India and a State, not between the Government of India and the Government of a State. The intrinsic evidence, it is argued, assumes greater credibility in the context that the article does employ the expression "Government of India" when what was meant was the Government, as contra distinguished from the state. The presence of the particular expressions in Art.131 does not, in my opinion, support the inference, suggested on behalf of the Union of India. The use of the phrase "Government of India" in Art.131(a) and (b) does not mean that one party to the dispute has to be the Government of the day at the Centre. "Government of India" means "Union of India" because if there be merit in the logic that Art. 131 does not comprehend disputes in which the Government of a State as contrasted with the State itself is interested, it must follow that correspondingly, the "Government of India" too cannot mean the Government for the time being in power at the centre. The true construction of Art.131 (a), true in substance and true pragmatically, is that a dispute must arise between the Union of India and a State.....

105. The dispute between the Union of India and a State cannot but be a dispute which arises out of the differences between the Government in office at the Centre and the Government in office in the State. `In office' means `in power' but the use of the latter expression may prudently be avoided with the realization of what goes with power. But there is a further prerequisite which narrows down the ambit of the class of disputes which fall within Art.131. That requirement is that the dispute must involve a question, whether of law or fact, on which the existence or extent of a legal right depends. It is this qualification which affords the true guide for determining whether a particular dispute is comprehended within Art.131. Mere wrangles between governments have no place in the scheme of that article. They have to be resolved elsewhere and by means less solemn and sacrosanct than a court proceeding. The purpose of Art.131 is to afford a forum for the resolution of disputes which depend for their decision on the existence or extent of a legal right. It is only when a legal, not a mere political, issue arises touching upon the existence or extent of a legal

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right that Art.131 is attracted.....

109. The expression "legal right" which occurs in Art.131 has to be understood in its proper perspective. In a strict sense, legal rights are correlative, of legal duties and are defined as interests which the law protects by imposing corresponding duties on others. But in a generic sense, the word "right" is used to mean an immunity from the legal power of another: immunity is exemption from the power of another in the same way as liberty is exemption from the right of another. Immunity, in short, is no-subjection..... The legal right of the States consists in their immunity, in the sense of freedom from the power of the Union Government. They are entitled, under Art.131, to assert that right either by contending in the absolute that the Centre has no power to dissolve the Legislative Assemblies or with the qualification that such a power cannot be exercised on the ground stated.....

157. Article 131 speaks of a legal right. That legal right must be that of the State. The dispute about a legal right, its existence or extent, must be capable of agitation between the Government of India and the States. The character of the dispute within the scope of Art.131 that emerges is with regard to a legal right which the States may be able to claim against the Government. For example, the State as a party must affirm a legal right of its own which the Government of India has denied or is interested in denying giving rise to a cause of action. For the purpose of deciding whether Article 131 is attracted the subject-matter of the dispute, therefore, assumes great importance."

6.3) In State of Karnataka Vs. Union of India and another (AIR 1978 Supreme Court 68) it was held as follows:-

"141. I have dealt at length with all the arguments which were advanced on behalf of the State of Karnataka because I accept as correct the submission of the learned counsel for the plaintiff that the case involves consideration of the exercise of governmental powers which vest in the government of the State and its Ministers as such vis a vis those of the Central Government and its Ministers. They also raise questions relating to the meaning and the ambit and the applicability of the particular provisions of the constitution whose operations are of vital interest to every state. Indeed, the interpretations given to these provisions must necessarily be of great concern to the Union as well. They are matters which involve the interests of the whole of the people of India who gave into themselves the Constitution whose provisions we have interpreted.....

144. It has to be remembered that Art.131 is traceable to Section 204 of the Government of India Act. The jurisdiction conferred by it thus originated in what was part of the federal structure set up by the Government of India Act 1935. It is a remnant of the Federalism found that Act. It should, therefore,

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be widely and generously interpreted for that reason too so as to advance the intended remedy. It can be invoked, in my opinion, whenever a State and other States or the Union differ on a question of interpretation of the Constitution so that a decision of it will affect the scope or exercise of governmental powers which are attributes of a State. It makes no difference to the maintainability of the action if the powers of the State, which are Executive, Legislative and Judicial, are exercised through particular individuals as they necessarily must be. It is true that a criminal act committed by a Minister is no part of his official duties. But, if any of the organs of the State claim exclusive power to take cognizance of it, the State, as such, becomes interested in the dispute about the legal competence or extent of powers of one of its organs which may emerge."

6.4) In Ajay Hasia etc., Vs. Khalid Mujib Sehravardi and others etc., (AIR 1981 Supreme Court 487) it was held as follows:-

"12. It is also necessary to add that merely because a juristic entity may be an "authority" and therefore "State" within the meaning of Article 12, it may not be elevated to the position of "State" for the purpose of Arts.209, 310 and 311 which find a place in Part XIV. The definition of "State" in Article 12 which includes an "authority" within the territory of India or under the control of the Government of India is not limited in its application only to Part III and by virtue of Article 36, to Part IV, it does not extend to the other provisions of the Constitution and hence a juristic entity which may be "State" for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution. That is why the decisions of this Court in S.L.Agarwal V.Hindustan Ltd., (1970) 3 SCR 363 : (AIR 1970 SC 1150) and other cases involving the applicability of Article 311 have no relevance to the issue before us."

6.5) In Chander Mohan Khanna Vs. The National Council of Educational Research & Training and others (AIR 1992 Supreme Court 76) it was held as follows:-

"2. There are only general principles but not exhaustive text to determine whether a body is an instrumentality or agency of the Government. Even in general principles, there is no cut and dried formula which would provide correct division of bodies into those which are instrumentalities or agencies of the Government and those which are not. The powers, functions, finances and control of the Government are some of the indicating factors to answer the question whether a body is "State" or not. Each case should be handled with care and caution. Where the financial assistance from the State is so much as to meet almost entire expenditure of the institution, or the share capital of the corporation is completely held by the government, it would afford some indication of the body being impregnated with governmental character. It may be a relevant factor if the institution or the corporation enjoys monopoly

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status which is State conferred or State protected. Existence of deep and pervasive State control may afford an indication. If the functions of the institution are of public importance and related to governmental functions, it would also be a relevant factor. These are merely indicative indicia and are by no means conclusive or clinching in any case.

3. Art.12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression "State". A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as "State" under Article 12. The State control, however vast and pervasive, is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State may largely point out that the body is "State". If the Government operates behind a corporate veil, carrying out governmental activity and governmental functions of vital public importance, there may be little difficulty in identifying the body as "State" within the meaning of Art.12 of the Constitution."

6.6) In Canara Bank and others Vs. National Thermal Power Corporation and another (2001 (1) SCC 43) it was held as follows:-

"12. What the Court has directed in ONGC case is that frivolous litigation between government departments and public sector undertakings of the Union of India should not be dragged in the courts and be amicably resolved by the Committee. The judgment is intended to prevent avoidable litigation between the government departments and the undertakings of the Union of India. In the present litigation there does not appear to be a genuine dispute between the Government of India undertakings. In this case one of the public sector undertaking is shown to be acting not as an undertaking but as Trustee of a Trust. The Board was, therefore, justified in holding "that the real litigation in this case, therefore, is between the Mutual Fund and NTPC" and not between the two undertakings. The meaning of the word "dispute" is, "a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other". In the instant case the claim preferred on behalf of the CBMF was not denied by the Corporation but in turn a counter-claim with respect to the liability of a subsidiary of the Bank was raised. The dispute raised is without laying any basis or placing on record any evidence in support thereof. Imaginative disputes raised only to defeat the undisputed claim of the Trustee could not be made the basis to deprive the Trustees and ultimately the public at large, of the value of the bonds which had, admittedly, been

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received by the Corporation with unambiguous undertaking to repay back the same."

6.7) In Mahanagar Telephone Nigam Ltd., Vs. Chairman, Central Board, Direct Taxes and another (AIR 2004 Supreme Court 2434) it was held as follows:-

"8. Undoubtedly, the right to enforce a right in a Court of law cannot be effaced. However, it must be remembered that Courts are overburdened with a large number of cases. The majority of such cases pertain to Government Departments and/or Public Sector Undertakings. As is stated in Chief Conservator of Forests case (supra) it was not contemplated by the framers of the Constitution or C.P.C that two departments of a State or Union of India and/or a department of the Government and a Public Sector Undertaking fight a litigation in a Court of law. Such a course is detrimental to public interest as it entails avoidable wastage of public money and time. These are all limbs of the Government and must act in co-ordination and not confrontation. The mechanism set up by this Court is not as suggested by Mr.Andhyarujina only to conciliate between the Government Departments. It is also set up for purposes of ensuring that frivolous disputes do not come before Courts without clearance from the High Powered Committee. If it can, the High Powered Committee will resolve the dispute. If the dispute is not resolved the Committee would undoubtedly give clearance. However, there could also be frivolous litigation proposed by a department of the Government or a Public Sector Undertaking. This could be prevented by the High Powered Committee. In such cases, there is no question of resolving the dispute. The committee only has to refuse permission to litigate. No right of the Department/Public Sector Undertaking is affected in such a case. The litigation being of a frivolous nature must not be brought to Court. To be remembered that in almost all cases one or the other party will not be happy with the decision of the High Powered Committee. The dissatisfied party will always claim that its rights are affected, when in fact, no right is affected. The Committee is constituted of highly placed officers of the government, who do not have an interest in the dispute, it is thus expected that their decision will be fair and honest. Even if the Department/Public Sector Undertaking finds the decision unpalatable, discipline requires that they abide by it. Otherwise the whole purpose of this exercise will be lost and every party against whom the decision is given will claim that they have been wronged and their rights are affected. This should not be allowed to be done.

9. In this case this is absolutely what has happened. The appellants wanted to approach the Court only against a show cause notice. It is settled law that against a show cause notice litigation should not be encouraged. The decision of the High Powered Committee, set out hereinabove, merely emphasizes the well settled position. It is an eminently fair and correct

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decision. The purpose of the decision was to prevent frivolous litigation. No right of the Appellants is being affected. It has been clarified that the Appellants could move a Court of law against an appealable order. By not maintaining discipline and abiding by the decision, the Appellants have wasted public money and time of the court. The clarificatory order, relied upon by Mr.Andhyarujina, clarifies in Para 5 as to what is to happen if clearance is not given by the Committee. It is set out that in the absence of the clearance the proceedings must not be proceeded with. This position is further clarified in Chief Conservator of Forests case (supra) where again this Court has held that the decision taken by such a Committee is binding on all Departments concerned and it is the stand of the Government.

10. In view of this settled law, which is binding on us, we hold that as clearance has not been given to the Appellants these proceedings cannot be proceeded with. The High Court was wrong in dealing with the merits of the matter. We, therefore, do not examine whether the High Court was right on merits. The Appeal accordingly stands disposed of with no orders as to costs."

Though the Supreme Court had referred to the applicability of the definition of the "State", under Article 12 of the Constitution of India, in its decisions relied on by the learned counsel appearing on behalf of the petitioner, it is seen that the Supreme Court had made certain observations in relation to its original jurisdiction under Article 131 of the Constitution of India. However, it is clear that the Supreme Court has been consistently holding that the disputes arising amongst the governments and their undertakings have to be placed before the High Powered Committee for resolving the contentious issues involved in such disputes. Approaching the Courts of law, at the first instance, is not the proper course to be taken in such matters.

7. Mr.P.S.Raman, the learned Additional Advocate General, appearing on behalf of the respondents 3 to 9, had submitted that the purpose behind the decisions of the Supreme Court is mainly to prevent wastage of public money and the valuable time of the Courts of law. In the disputes arising amongst the Governments and other instrumentalities, agencies and authorities, coming under the definition of the "State", as defined in Article 12 of the Constitution of India, High Powered Committees are constituted to try and settle the contentious issues, based on the directions issued by the Supreme Court of India. Only if such issues are not resolved before the High Powered Committees, constituted for the said purpose, the parties to the dispute may be permitted to approach the Courts of law. In the present case, the petitioner being, a Government of India undertaking, cannot come before this Court by way of a writ petition, under Article 226 of the Constitution of India, to establish its rights against the respondents.

8. The learned Additional Advocate General, appearing on behalf of the respondents 3 to 9, had relied on the various decisions of the Supreme

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Court in support of his contentions. They are as follows:

8.1) In Chief Conservator of Forests, Govt. of A.P. Vs. Collector and others (AIR 2003 SC 1805) it was held as follows:-

> "13. Under the scheme of the Constitution, Article 131 confers original jurisdiction on the Supreme Court in regard to a dispute between two States of the Union of India or between one or more States and the Union of India. It was not contemplated by the framers of the Constitution or the C.P.C that two departments of a State or the Union of India will fight a litigation in a Court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a Court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, therefore, they must act in co-ordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and polity as it smacks of undiscipline but is also contrary to the basic concept of law which requires that for suing or being sued, there must be either a natural or a juristic person. The States/Union of India must evolve a mechanism to set at rest all inter-departmental controversies at the level of the Government and such matters should not be carried to a Court of law for resolution of the controversy. In the case of disputes between public sector undertakings and Union of India, this Court in Oil and Natural Gas Commission v. Collector of Central Excise (1992 Suppl. (2) SCC 432) called upon the Cabinet Secretary to handle such matters. In Oil and Natural Gas Commission and Anr. V. Collector of Central Excise (1995 Suppl (4) SCC 541), this Court directed the Central Government to set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor dispute between Ministry and Ministry of the Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline."

8.2) In Mahanagar Telephone Nigam Ltd., Vs. Chairman, Central Board, Direct Taxes and another (2004 AIR SCW 2934) it was held as follows:-

> "3. Mr.Rohatgi has raised a preliminary objection to the Special Leave Petition being proceeded with by this Court. He submits that this Court has in the case of Oil and Natural Gas Commission v. Collector of Central Excise reported in (1995) Supp (4) SCC 541, held that in every case where a dispute is

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between Government Departments and/or between a Government Department and a Public Sector Undertaking, the matter should be referred to the High Powered Committee established by the Government pursuant to an order of this Court dated 11th September, 1991. He pointed out that it has been held by this Court that it is the duty of every Court or Tribunal to demand clearance from the Committee and that in the absence of clearance the proceedings must not be proceeded with."

8.3) In Oil and Natural Gas Commission and Another Vs. Collector of Central Excise (1992 Supp (2) SCC 432) it was held as follows:-

"3. This Court has on more than one occasion pointed out that Public Sector Undertakings of Central Government and the Union of India should not fight their litigations in Court by spending money on fees of counsel, court fees, procedural expenses and wasting public time. Courts are maintained for appropriate litigations. Court's time is not to be consumed by litigations which are carried on either side at public expenses from the source. Notwithstanding these observations repeated on a number of occasions, the present cases appear to be an instance of total calousness. The letter of October 3, 1988, indicated that the Cabinet Secretary was looking into the matter. That has not obviously been followed up. As an instance of wasting public time and energy this matter involves a principle to be examined at the highest level.

4. The Cabinet Secretary is called upon to handle this matter personally and report to this Court within four weeks as to why this litigation is being conducted when the two sides are a public sector undertaking and the Union of India. The report of the Cabinet Secretary should be supported by an affidavit of a responsible officer. The matter be placed again before us on October 11, 1991."

8.4) In Oil and Natural Gas Commission and Another Vs. Collector of Central Excise (1992 Supp (2) SCC 541) it was held as follows:-

"1. We are happy to find that the Cabinet Secretary has taken the appropriate initiative as indicated in our order dated 11.09.1991 and has reported to us that the dispute between the Government Department and the public sector undertaking of the Union of India has been settled. In that view of the matter no further action is necessary on the petition.

2. In his report the Cabinet Secretary has stated:

"I would also like to state that the Government respects the views expressed by this Honourable Court and has accepted them that public undertakings of Central Government and the Union of India should not fight their litigation in Court by spending money on fees on counsel, court fees, procedural expenses and wasting public time. It is in this context that the Cabinet Secretariat has issued instructions from time to time to all Departments of the Government of India as well as to public undertakings of the Central Government to the effect that all disputes, regardless of the type, should be resolved amicably by mutual consultation or through the good offices of empowered

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agencies of the Government or through arbitration and recourse to litigation should be eliminated."

3. We direct that the Government of India shall set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation, Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee, Senior officers only should be nominated so that the Committee would function with status, control and discipline.

4. It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.

5. The Committee shall function under the ultimate control of the Cabinet Secretary but is delegate may look after the matters. This Court would expect a quarterly report about the functioning of this system to be furnished to the Registry beginning from 01.01.1992.

6. Our direction may be communicated to every High Court for information of all the Courts subordinate to them."

9. Based on the above decisions, the learned counsel Mr.P.S.Raman had reiterated his statement that the petitioner cannot maintain the present writ petition against the respondents. The learned counsel had further submitted that the petitioner cannot rely on the decision of the Supreme Court in Canara Bank and others Vs. National Thermal Power corporation and another (2001(1) SCC 43), since the bank, in the said case had acted as a trustee of a trust and not as a public sector undertaking.

10. Mr.P.Wilson, learned Assistant Solicitor General of India, representing the respondents 1 and 2, had submitted that the petitioner is functioning under the first respondent, namely, the Ministry of Mines, Government of India. The petitioner ought to have placed the matter before the High Powered Committee before approaching this Court. Since the Government of India had not approved the approach of the petitioner, the present writ petition cannot be maintained by the petitioner as the necessary formalities have not been complied with, as contemplated by the Apex Court in its decision made in Chief Conservator of Forests, Govt. of A.P Vs. Collector and others (AIR 2003 S.C.1805). Even if a specific relief is not prayed for against the Government of India or the State Government or other instrumentalities, agencies or authorities, coming

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under the definition of Article 12 of the Constitution of India, the very process of litigation, without complying with the necessary formalities, would amount to contravention of the principles laid down by the Apex Court.

11. The learned Assistant Solicitor General of India, representing the respondents 1 and 2, had also submitted that the Government of India has no objection to the transfer of the land in question to the tenth respondent and that the Government of India is not opposed to the order passed by the Government of Tamil Nadu in G.O.Ms.No.114, Revenue (Ni Mu 7) Department, dated 7.3.2007.

12. The learned counsel appearing for the tenth respondent had submitted that the possession of the land in question had been given to the tenth respondent, on 4.4.2007, by the Government of Tamil Nadu, in accordance with G.O.Ms.No.114, Revenue (Ni Mu 7) Department, dated 7.3.2007, after the Government of India had granted the approval for the setting up an Information Technology Park in the Special Economic Zone allotted for the said purpose. The tenth respondent had also paid a part of the consideration to the Government of Tamil Nadu.

13. The learned senior counsel appearing on behalf of the petitioner had submitted, by way of reply, that even though the petitioner had made several objections with regard to the allotment of the land to ELCOT, the tenth respondent herein, by the Government of Tamil Nadu, no notice or opportunity had been given to the petitioner before the impugned government order in G.O.Ms.No.114, Revenue (Ni Mu 7) Department, dated 7.3.2007, had been passed.

14. The learned senior counsel, appearing on behalf of the petitioner had further submitted that the petitioner has been carrying on mining operations for a long time and the allotment of a portion of the land, in which the mining operations are carried on, to the tenth respondent, would cause grave prejudice and monetary loss to the petitioner. Therefore, it has become necessary for the petitioner to approach this Court by way of a writ petition, under Article 226 of the Constitution of India, praying for the relief sought for therein. Hence, the writ petition is maintainable and it is not contrary to the directions issued by the Supreme Court, as contended by the learned counsels appearing on behalf of the respondents.

15. Considering the rival contentions raised on behalf of the parties concerned and in view of the decisions cited in support of their contentions, this Court is of the considered view that the petitioner ought to have placed the contentious issues before the High Powered Committee, as contemplated by the Supreme Court in its decision reported in Chief Conservator of Forests, Govt. of A.P. Vs. Collector and others (AIR 2003 S.C.1805), before approaching this Court by way of a writ petition.

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16. Further, the petitioner has not been in a position to show sufficient support to her contentions that the petitioner does not come under the definition of the "State", under Article 12 of the Constitution of India. Merely because an instrumentality, or an agency either under the control of the Government of India or of a State Government, is carrying on a commercial activity, it cannot be said that such an instrumentality or agency would not come under the definition of the "State", under Article 12 of the Constitution of India. In the present day scenario, the Governments are involved in multifarious activities, including certain activities which are purely commercial in nature. Therefore, it cannot be countenanced that an instrumentality or an agency of a Government would fall outside the definition of the "State", merely because such an instrumentality or agency is carrying on commercial activities. This is also not a case where even if some damage is caused to the petitioner it cannot be rectified or compensated for at a later stage. Therefore, there is no necessity to pass any order of an interim nature, to protect the interests of the petitioner, as prayed for.

17. In such view of the matter, without going into the merits of the case, the writ petition stands dismissed. However, it is open to the petitioner to approach the High Powered Committee to be constituted by the Government of India, as contemplated by the Supreme Court, reported in Chief Conservator of Forests, Govt. of A.P. Vs. Collector and others (AIR 2003 S.C.1805), to resolve the contentious issues. No costs. Consequently, connected M.P.Nos.1 to 3 of 2007 are closed.
lan

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary
   Union of India
   Ministry of Mines, New Delhi - 11

2. Ministry of Heavy Industries
   and Public Enterprises,
   Government of India,
   rep. by the Secretary,
   Udyog Bhawan, New Delhi -11

3. The State of Tamil Nadu
   rep by the Chief Secretary,
   Fort St. George, Chennai - 9

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4. The Secretary,
   Revenue Department
   Government of Tamil Nadu
   Fort St.George, Chennai - 9

5. The Secretary,
   Agricultural Department,
   Fort St.George, Chennai - 9

6. The Commissioner,
   Department of Geology and Mining
   Guindy, Chennai

7. The Assistant Director,
   Department of Geology and Mining,
   26-A, Shankar Nagar, Salem-7

8. The District Collector,
   Salem District
   Salem

9. The Tahsildar,
   Salem

10. Chairman cum Managing Director,
    Elcot, Chennai - 600 035

+ One cc to Mr. P. Wison Advocate SR 56131
+ One cc to Govt Pleader SR 56183
+ One cc to King Patridge, SR 56084
+ One cc to Mr. R. Subramaniam, Advocate sR 56044

AD (co)
sg 10/9/07

W.P.No.25458 of 2007
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